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U.S. DISTRICT COURT  
DISTRICT OF IDAHO  
Pocatello, Idaho  
CLERK, IDAHO

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C.,  
an Idaho professional corporation,

Plaintiff,

vs.

INTERDENT SERVICE  
CORPORATION, a Washington  
corporation,

Defendant.

Case No. CV-03-450-E

**DECLARATION OF COUNSEL  
IN SUPPORT OF  
MOTION TO QUASH  
SUBPOENA DUCES TECUM**

LOWELL N. HAWKES, declares as follows:

1. **Declaration.** This Declaration is made upon personal and professional knowledge and pursuant to 27 U. S. Code § 1746. I have been licensed to practice law since 1971 and am currently licensed in Idaho and Utah.

2. **Representation.** I am retained counsel for Dr. Dwight G. Romriell who is a practicing, Idaho-licensed dentist specializing in the diagnosis and treatment of temporomandibular disease and disorders and who has unique credentials among Idaho

dentists. Those unique credentials are more fully set forth in his Declaration filed simultaneously with this Declaration.

3. **Employment Agreement Expired.** Dr. Romriell's employment agreement with the Pocatello Dental Group recently expired October 11, 2003 and he has been in the process of setting up his independent professional practice in Pocatello since being advised in writing by Defendant on September 8, 2003 that he was to totally vacate the premises by October 11<sup>th</sup>. This lawsuit occurs in the context of his willingness to continue assisting the dentists with whom he has been formerly associated at the Pocatello Dental Group while he makes his transition into his new practice.

4. **Service of Subpoena Duces Tecum.** This afternoon at about 2:00 p.m. Dr. Romriell was served with a Defense-initiated Subpoena Duces Tecum (in the name of Dwight R. Romriell) requiring an appearance for a deposition tomorrow morning at 9:00 a.m. The duces tecum portion of the Subpoena contained 16 categories of documents to be produced that followed two pages of definitions. A copy of that Subpoena Duces Tecum as served is attached to Dr. Romriell's Declaration filed simultaneously with this Declaration.

5. **No Witness Fee.** No witness fee was served with the Subpoena. Defense counsel have advised me that they recognize no obligation to professionally compensate Dr. Romriell for his time responding to a deposition or subpoena. This appears to be at odds with the provisions set forth in the Subpoena related to Rule 45(c) *Federal Rules of Civil Procedure*, requiring Defendant Interdent Service Corporation to "take reasonable steps to avoid imposing undue burden or expense on a person subject to

a subpoena” and allows the Court to impose an appropriate sanction, including “lost earnings.”

5. **Demands of Subpoena.** Because of the demands of the Subpoena it is not possible for either myself or Dr. Romriell to comply with the Subpoena Duces Tecum on such short notice under the current circumstances prevailing. Overall, the Subpoena Duces Tecum appears designed to be oppressive and unnecessarily burdensome and beyond the scope of reasonable discovery. For example:

(a) The Subpoena Duces Tecum is unreasonably broad, virtually requiring *every piece of paper* in any way connected with Dr. Romriell’s practice; he would have to box up *his entire practice* in order to comply with the Subpoena Duces Tecum.

(b) The Subpoena Duces Tecum is so broad that it even covers professional communication between me and Dr. Romriell.

(c) The Subpoena Duces Tecum is so broad it covers many documents the Defendant already has as well as settlement discussion documents that are designated as privileged.

6. **Time Limitations.** I am currently in the final stages of preparation for a trial beginning next Tuesday in Idaho Falls and I have very limited time to divert from that trial preparation. Nevertheless, I have sought, without success, to try and find a good faith professional accommodation to defense counsel herein to provide for a reasonable deposition prior to the scheduled hearing this Friday.

7. **Failed Efforts.** In order to meet Dr. Romriell’s and my own time constraints and demands I have offered to defense counsel to make Dr. Romriell available for a reasonable deposition provided there were some prior agreement designed to (a) limit the length of a deposition and (b) define the issues which would be covered in the

deposition so as to avoid wasting time and taking time away from necessary trial preparation in the upcoming trial scheduled to begin November 18<sup>th</sup> in Idaho Falls. However, defense counsel have been unwilling to make any agreement that would limit the time or define the issues to be covered in a deposition despite my offer to allow a further deposition later on issues not needed to be covered for the upcoming hearing.

8. **Reasonable Time Requirement.** A short deposition would meet the needs of the upcoming hearing. Specifically, in prior correspondence the Defendant Interdent Service Corporation has only identified a few paragraphs in Dr. Romriell's affidavit with which it took issue. It is my professional judgment that a good faith deposition could cover those disputed paragraphs *in an hour or less*. Nevertheless I offered to make Dr. Romriell available for two hours. Defense counsel rejected that offer and reasserted an unwillingness to make any agreement to limit time or issues.

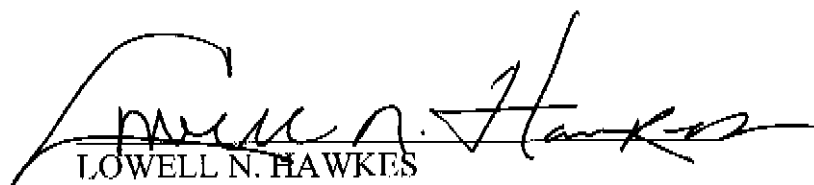
9. **Reasonable Issues Definition and "Counterclaims".** A limitation on issues is necessary in this context because, absent such, I cannot even determine the breadth or subject matter of the issues that I would need to know in order to properly educate myself and prepare Dr. Romriell to testify. In fact, I cannot even determine who the parties are in this case at this time. Specifically, the Plaintiff and Defendant are both *corporations*. However, Defendant Interdent has filed a pleading denominated as an "Answer and Counterclaims" (*plural*) in which Dr. Romriell and six other dentists are specifically named in a modified caption as "Counterdefendants." However, those *individuals* named in the "Counterclaim" are *not* even parties Plaintiff. No Third-Party Complaint has been filed and no Summonses on any Third-Party Complaint have been

issued, and, to my knowledge, none of the named individuals have ever been served. Nevertheless, I am advised by Plaintiff's counsel that counsel for Defendant Interdent Service Corporation asserts a right to have filed *Counterclaims* against Dr. Romriell and other individuals who were not original parties to the Complaint. Thus, in this context the Subpoena Duces Tecum seeks to take an unlimited deposition prior to the time that Dr. Romriell has even been served with the "Counterclaims" naming him individually.

10. No Discovery Plan Filed. No stipulated discovery or Litigation Plan has been filed with this Court pursuant to *Local Rule* 16.1. Thus, all of the foregoing occurs in the context of attempted and unlimited discovery prior to the filing of a stipulated or ordered Litigation Plan.

EXECUTED this 10<sup>th</sup> day of November, 2003.

LOWELL N. HAWKES, CHARTERED



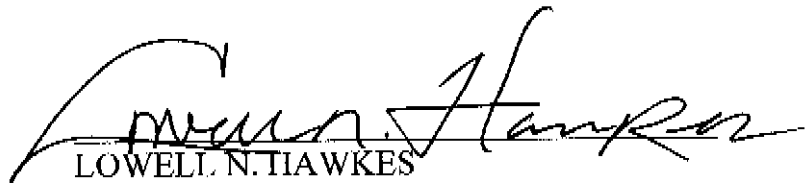
LOWELL N. HAWKES

**CERTIFICATE OF SERVICE**

I certify that on this 10<sup>th</sup> day of November 2003, I sent by fax a copy of the foregoing to counsel for the parties as shown below:

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LOWELL N. HAWKES